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## Sexual Violence as a Weapon of War in Ethiopia's Tigray Region and the Developing Adjudication of Violations of the Protocol on the Rights of Women in Africa

Valerie R. Cook

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**SEXUAL VIOLENCE AS A WEAPON OF WAR  
IN ETHIOPIA’S TIGRAY REGION AND THE  
DEVELOPING ADJUDICATION OF  
VIOLATIONS OF THE PROTOCOL ON THE  
RIGHTS OF WOMEN IN AFRICA**

VALERIE R. COOK\*

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## I. INTRODUCTION

On November 4, 2020, a civil war broke out in the Tigray region of Ethiopia between joint Ethiopian and Eritrean military forces and the Tigray People's Liberation Front ("TPLF").<sup>1</sup> The war is in part an ethnic conflict between the newly centralized nationalist government under Prime Minister Abiy Ahmed and the once politically dominant beneficiaries of a federalist system, the TPLF.<sup>2</sup> Sexual violence as a

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1. See *Ethiopia's Tigray War: The Short, Medium and Long Story*, BBC (June 29, 2021), <https://www.bbc.com/news/world-africa-54964378> (explaining the circumstances of the civil war between the government of Ethiopia and forces in its northern Tigray region).

2. See Abdullah Boru Halakhe, *Abiy's Efforts to Unify Ethiopia Could Lead to Its Disintegration*, AL JAZEERA (Dec. 7, 2020),

method of war has become a hallmark of this conflict as reports of rape by Ethiopian and Eritrean soldiers against Tigrayan women have increased.<sup>3</sup>

Hundreds of civilian women and girls caught in the crosshairs of the conflict have sought medical help for gang rape, severe internal injuries, pregnancies, and sexually transmitted infections.<sup>4</sup> Even with the mass reports of rape coinciding with the conflict, the actual number of rapes is likely much higher than reported due to the stigma women face.<sup>5</sup> Additionally, government forces targeting regional hospitals has made it difficult for women to access medical help.<sup>6</sup>

On November 25, 2005, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") was entered into force in Maputo, Mozambique

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<https://www.aljazeera.com/opinions/2020/12/7/abiys-efforts-to-unify-ethiopia-could-lead-to-its-disintegration> (explaining that in December 2019, Abiy's government dismantled a four-party federalist coalition called the Ethiopian People's Revolutionary Democratic Front ("EPRDF")—which had been dominated by the TPLF—and replaced it with the centralized Prosperity Party ("PP"), favoring instead the Amhara ethnic group).

3. See Michelle Nichols, *Sexual Violence Being Used as a Weapon of War in Ethiopia's Tigray*, U.N. Says, REUTERS (Apr. 15, 2021, 14:50 PM), <https://www.reuters.com/world/africa/sexual-violence-being-used-weapon-war-ethiopias-tigray-un-says-2021-04-15/> (raising concern about the increased use of sexual violence as a weapon in the civil war in Ethiopia's Tigray).

4. See Lucy Kassa & Anna Pujol-Mazzini, *'We're Here to Make You HIV Positive': Hundreds of Women Rush to Tigray Hospitals as Soldiers Use Rape as Weapon of War*, THE TELEGRAPH (Mar. 27, 2021, 8:30 AM), <https://www.telegraph.co.uk/global-health/women-and-girls/make-hiv-positive-hundreds-women-rush-tigray-hospitals-soldiers/> (reporting that hundreds of women and girls in Ethiopia's Tigray are seeking medical help after being victims of sexual violence).

5. See Katherine Houreld, *Special Report: Health Official Alleges 'Sexual Slavery' in Tigray; Women Blame Soldiers*, REUTERS (Apr. 15, 2021, 3:06 AM) <https://www.reuters.com/article/us-ethiopia-conflict-rape-specialreport-idAFKBN2C20P0> (noting that the actual number of rapes is likely to be much higher than the reported number of rapes).

6. See *People Left with Few Healthcare Options in Tigray as Facilities Looted, Destroyed*, MEDECINS SANS FRONTIERES (Mar. 15, 2021), <https://www.msf.org/health-facilities-targeted-tigray-region-ethiopia> (stating that Tigray had one of the best healthcare systems in Ethiopia before the conflict, but now the system has almost entirely collapsed, and one in five health facilities is occupied by soldiers).

by states parties of the African Union (“AU”).<sup>7</sup> Ethiopia ratified the Maputo Protocol in May 2018.<sup>8</sup> The Maputo Protocol notes that despite the passage of the African Charter on Human and Peoples’ Rights (“ACHPR”) in June 1981, women in Africa continue to face disproportionate violence and discrimination, and the Maputo Protocol seeks to address this injustice.<sup>9</sup> While Eritrean and Ethiopian soldiers have both perpetrated rape, this Comment focuses on Ethiopia’s responsibilities under the Maputo Protocol.<sup>10</sup>

Article 11 of the Maputo Protocol requires that with regard to the protection of women in armed conflicts, “states parties undertake to protect [internally] displaced persons against [rape] and other forms of sexual exploitation.”<sup>11</sup> The Maputo Protocol further conditions that states parties shall bring perpetrators of such crimes before “a competent criminal jurisdiction” and treat such acts as “war crimes, genocide [or] crimes against humanity.”<sup>12</sup> The systematic rape for purposes of erasure of identity and spread of disease against Tigrayan women rises to the type of sexual exploitation Article 11 of the Maputo Protocol undertakes to protect against.<sup>13</sup>

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7. See Frans Viljoen, *An Introduction to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, 16 WASH. & LEE J. CIV. RTS. SOC. JUST. 11, 12 (2009) (noting that the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, also referred to as the “Maputo Protocol”, was entered into force in Maputo, Mozambique on November 25, 2005 by members of the African Union).

8. See *Celebrating the Maputo Protocol at 15*, ALLIANCE FOR AFR. (July 11, 2018), <https://alliancesforafrica.org/celebrating-the-maputo-protocol-at-15/> [hereinafter *Celebrating the MP*] (noting that Ethiopia ratified the Maputo Protocol in May 2018); *4<sup>th</sup> Forum of the African Union on International Law and African Union Law*, Concept Note, AFRICAN UNION Cairo, Egypt, (Oct. 19-20, 2015), [https://au.int/sites/default/files/newsevents/conceptnotes/32072-cn-aucil\\_4th\\_forum\\_concept\\_note\\_eng.pdf](https://au.int/sites/default/files/newsevents/conceptnotes/32072-cn-aucil_4th_forum_concept_note_eng.pdf) (defining ratification as a state’s acceptance to be legally bound by a convention or treaty).

9. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa preamble, July 11, 2003 [hereinafter *Maputo Protocol*].

10. See CTR. FOR HUM. RTS. UNIV. PRETORIA, <https://www.maputoprotocol.up.ac.za/index.php/eritrea> (showing that Eritrea has not ratified the Maputo Protocol).

11. Maputo Protocol *supra* note 9, art. 11.

12. *Id.*

13. See Susana SáCouto & Katherine Cleary, *The Women’s Protocol to the African Charter and Sexual Violence in the Context of Armed Conflict or Other Mass Atrocity*, 16 WASH. & LEE J. CIV. RTS. SOC. JUST. 173, 188 (2009) (arguing

Article 25 requires that states provide remedies to women whose rights under the Maputo Protocol have been violated.<sup>14</sup> Article 25 also requires that remedies are determined by a competent authority.<sup>15</sup>

This Comment argues that Ethiopia violated Articles 11 and 25 of the Maputo Protocol by failing to protect civilian Tigrayan women and girls from rape during a civil war, which has resulted in physical and psychological injuries, systematic spread of sexually transmitted infections, unwanted pregnancies, and decimation of ethnic identity.<sup>16</sup> Part II of this Comment provides an examination of the establishment of the Maputo Protocol, background on politics in Ethiopia and the conflict in Tigray, and relevant history of the African Union and efforts to apply the Maputo Protocol.<sup>17</sup> Part II also examines challenges that complicate adjudication of violations of the Maputo Protocol in Ethiopia.<sup>18</sup> Part III of this Comment analyses Ethiopia's obligations when it is in violation of an AU charter without being party to a judicial mechanism for bringing justice.<sup>19</sup> Part IV recommends that Ethiopia cooperate with the AU and the African Commission on Human and People's Rights to fulfill its obligations under the Maputo Protocol to protect women and girls from sexual violence during armed conflicts and try perpetrators of such crimes before a competent court—treating the atrocities properly, as war crimes.<sup>20</sup>

## II. BACKGROUND

### A. THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

The purpose of the Maputo Protocol is to recognize the crucial

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that the Maputo Protocol could reduce violence against women by reframing sexual exploitation in times of conflict as “core crimes” as opposed to “opportunistic”).

14. Maputo Protocol *supra* note 9, art. 25.

15. *Id.*

16. *See infra* Part I.

17. *See infra* Part II.

18. *Id.*

19. *See infra* Part III.

20. *See infra* Part IV.

role of women in furthering African values and codify the human rights of African women.<sup>21</sup> The preamble of the protocol notes that although women's rights have been recognized as unalienable by international human rights instruments like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), women in Africa continue to face disproportionate violence and discrimination, and the Maputo Protocol seeks to resolve this discrepancy.<sup>22</sup>

Ethiopia became a party to CEDAW in 1981, and the convention is generally known as an international bill of rights for women.<sup>23</sup> However, CEDAW makes no mention of women's rights during wartime or women's rights against sexual violence.<sup>24</sup> In August 1995, the non-governmental organization ("NGO"), Women in Law and Development in Africa ("WiLDAF") argued for greater protections for women in Africa at the UNIFEM-AFWIC Conference on Women in Conflict Situations in Africa, located in Addis Ababa, Ethiopia.<sup>25</sup>

The concept of the Maputo Protocol was endorsed under the African Charter on Human and Peoples' Rights ("ACHPR") during the Assembly of Heads of State and Government of the Organization of African Unity in June 1995 under Resolution AHF/Res. 240 (XXXI).<sup>26</sup> Endorsement of the Maputo Protocol was also a response to concerns that the ACHPR did not adequately address challenges to

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21. See Maputo Protocol Preamble, *supra* note 9, preamble (explaining the purpose of the Maputo Protocol).

22. *Id.*

23. See Zewdnesch Zegeye, L.L.B. Thesis, *Challenges on Implementation of CEDAW in Ethiopia*, ST. MARY'S UNIV. COLL. July 2008 (stating that CEDAW is generally known as an international bill of rights for women).

24. *Id.*

25. Florence Butegwa, *The Human Rights of Women in Conflict Situations in African: A Key Concern for WILDAF*, PEACE WOMEN (Aug. 1, 1995) [http://www.peacewomen.org/sites/default/files/Disp\\_HRConflictAfrica\\_WILDAF\\_1995\\_0.pdf](http://www.peacewomen.org/sites/default/files/Disp_HRConflictAfrica_WILDAF_1995_0.pdf); see also *Resources*, WAR RESISTERS' INT'L (Mar. 1, 1996) <https://wri-irg.org/en/story/1996/resources> (stating that The United Nations Development Fund for Women (UNIFEM) created the African Women in Crisis (AFWIC) program to help African Women take an active role in peace-making).

26. See Maputo Protocol Preamble, *supra* note 9, preamble (stating that women in Africa face disproportionate discrimination).

human rights faced specifically by women in Africa.<sup>27</sup> Drafting of the Maputo Protocol involved the work of many NGOs and women's rights organizations.<sup>28</sup> In July 2003, the Maputo Protocol was adopted by member states of the African Union, and entered into force in November 2005.<sup>29</sup> The Maputo Protocol is a landmark treaty because of the explicit rights and protections it provides women against enumerated forms of violence.<sup>30</sup> As of March 2021, forty-two member states of the AU have ratified the protocol, with thirteen member states remaining to complete universal ratification.<sup>31</sup> Article 11 contains the relevant provisions protecting women in armed conflicts from sexual exploitation.<sup>32</sup>

*i. Article 11: Protecting the rights of women during armed conflicts & Article 25: Remedies*

Article 11 of the Maputo Protocol requires states parties to protect civilian women in conflict zones against violence, rape, and sexual exploitation pursuant to the state's obligations under international humanitarian law, regardless of the population the women belong

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27. *Id.*

28. See *A Guide to Using the Protocol to the Rights of Women in Africa for Legal Action*, EQUALITY NOW (2011), [https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/303/attachments/original/1527598602/Manual\\_on\\_Protocol\\_on\\_Women\\_Rights\\_in\\_Africa\\_EN.pdf?1527598602](https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/303/attachments/original/1527598602/Manual_on_Protocol_on_Women_Rights_in_Africa_EN.pdf?1527598602) (stating that groups including Equality Now, African Centre For Democracy and Human Rights Studies, Akina Mama Wa Afrika, Ethiopian Women Lawyers Association, Femmes Africa Solidarite, FEMNET, WILDAF, and others convened to draft the text of the Protocol) [hereinafter Equality Now Guide].

29. See *id.*; *United Nations Treaty Collection Glossary*, UNITED NATIONS, [https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1\\_en.xml#adoption](https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#adoption) (defining adoption as a formal act establishing proposed texts through expressed consent by states participating in treaty making, and defining entry into force as the timing and conditions upon which the initiation of the treaty may be set, including, for example, a minimum number of adopting states or a period of time to elapse after a number of parties have consented to the treaty—signifying that a state may adopt a treaty before it is entered into force).

30. See Equality Now Guide, *supra* note 28 (listing a broad range of rights of women that the Maputo Protocol protects, including against sexual violence).

31. *9 Ways the Maputo Protocol Has Protected and Promoted the Rights of Women and Girls across Africa*, EQUALITY NOW (Mar. 24, 2021), [https://www.equalitynow.org/9\\_ways\\_maputo\\_protocol](https://www.equalitynow.org/9_ways_maputo_protocol) [hereinafter *9 Ways*].

32. Maputo Protocol *supra* note 9, art. 11.



to.<sup>33</sup> Additionally, Article 11 requires states parties to bring perpetrators before a competent criminal jurisdiction.<sup>34</sup> To violate Article 11, there must be (1) a state's failure to protect an internally displaced person, (2) an act of sexual exploitation, and (3) a state's failure to bring the act to a competent criminal court as an atrocity.

Article 25 of the Maputo Protocol states that states parties shall provide remedies as determined by a competent judicial, administrative, or legislative authority to women whose rights have been violated.<sup>35</sup> Article 25 is a key provision of the Maputo Protocol because it has been used as a mechanism for securing monetary damages over declaratory relief in multiple jurisdictions.<sup>36</sup>

### B. PAST VIOLATIONS OF THE MAPUTO PROTOCOL

Past violations of the Maputo Protocol have been both sparse and variable in rulings.<sup>37</sup> There are a variety of reasons why a limited number of violations to the Maputo Protocol have been adjudicated, including the AU's traditional position of non-interference, the protocol's recent entry into force in 2005, and reluctant adoption of the protocol among AU member states.<sup>38</sup> Past violations of the Maputo Protocol include four distinct cases.<sup>39</sup> First, in *Njemanze v. Nigeria*, remedies were awarded to survivors of sexual assault by members of a Nigerian government agency.<sup>40</sup> Second, Kenya violated Articles 4 and 25 of the Maputo Protocol in *Coalition on Violence Against Women v. Attorney General of Kenya*.<sup>41</sup> Third, in

33. *Id.*

34. *Id.*

35. Maputo Protocol *supra* note 9, art. 25.

36. *See infra* Part II (B)(a)–(b).

37. *Id.*

38. *See* Celebrating the MP, *supra* note 8; *but see From Non-Interference to Non-Indifference: The African Union and the Responsibility to Protect*, INT'L REFUGEE RTS. INITIATIVE (Sept. 2017), <https://reliefweb.int/sites/reliefweb.int/files/resources/AU%20R2P%20-%20final.pdf> [hereinafter *Non-Interference to Non-Indifference*] (arguing that since the AU transitioned from the Organization of African Unity in 2001, it has shifted from non-interference to non-indifference, although greater efforts to intervene in instances of human right abuses are needed).

39. *See infra* Part II(B).

40. *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017).

41. *Coalition on Violence Against Women v. Attorney General of Kenya*,

*Equality Now v. Ethiopia*, monetary damages for a child rape victim were deemed an appropriate remedy for a violation of the Maputo Protocol's parent charter, the ACHPR.<sup>42</sup> Lastly, while *Habré v. Senegal* does not address a violation of the Maputo Protocol, it provides relevant consideration of venue and jurisdiction for state crimes of sexual violence during times of conflict.<sup>43</sup>

*i. Njemanze v. Nigeria*

The historic first ruling of a regional court on a violation of women's rights under the Maputo Protocol was by the Economic Community of West African States ("ECOWAS") Court of Justice in *Njemanze v. Nigeria*.<sup>44</sup> After they were abducted, unlawfully detained, and sexually assaulted by members of a government agency, Ms. Njemanze and three other plaintiffs filed suit against the government of Nigeria for failing to protect them from gender-based discrimination and cruel or degrading treatment.<sup>45</sup> The women filed a complaint to the ECOWAS court that, among other violations, Nigeria had violated Articles 2, 3, 4, 5, 8, and 25 of the Maputo Protocol.<sup>46</sup> The women had been subjected to arbitrary arrests under

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H.C.K., Const. and Hum. Rts. Div., Petition No. 122 of 2013, 1 (2020) [hereinafter CVW v. AG Kenya].

42. *Equality Now v. Ethiopia*, ACHPR 341/2007 (2016).

43. *Habré v. Senegal*, ECW/CCJ/JUD/06/10 (2020).

44. *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017).

45. See *ECOWAS Court Makes First Pronouncement on Maputo Protocol: Rules in Favour of Plaintiffs in Case of Dorothy Njemanze & 3 Ors V Federal Republic of Nigeria*, AFRICAN WOMEN'S DEV. FUND (Oct. 13, 2017), <https://awdf.org/ecowas-court-makes-first-pronouncement-on-maputo-protocol-rules-in-favour-of-plaintiffs-in-case-of-dorothy-njemanze-3-ors-v-federal-republic-of-nigeria/> (detailing the court's finding of violations of Articles 2, 3, 4, 5, 8, and 25 of the Protocol, as well as violations of the ACHPR, CEDAW, ICCPR, Convention Against Torture ("CAT"), and UDHR) [hereinafter *First Pronouncement on MP*]; Brice Martial Djeugoue, *Synopsis of the Case of Dorothy Njemanze & 3 Others V. The Federal Republic of Nigeria*, INST. FOR HUM. RTS. AND DEV. IN AFR. (Oct. 16, 2017), <https://www.ihrda.org/2017/10/synopsis-of-the-case-of-dorothy-njemanze-3-others-v-the-federal-republic-of-nigeria/> (providing amplifying details about the case).

46. See *First Pronouncement on MP*, *supra* note 45 (covering the elimination of discrimination against women, right to dignity, rights to integrity of person, elimination of harmful practices, access to justice and equal protection under law, and remedies).

accusations of prostitution and were sexually assaulted while in the custody of government officials.<sup>47</sup> The Court found that Nigeria had violated the aforementioned articles of the Maputo Protocol in addition to provisions of the ACHPR and CEDAW.<sup>48</sup> The Court awarded damages equivalent to approximately \$40,000 USD per survivor to three of the four plaintiffs.<sup>49</sup> The court also ruled that the Nigerian state had failed to investigate and prosecute allegations of mistreatment and that the treatment amounted to gender-based violence.<sup>50</sup> The case has been recognized as a turning point in bringing justice to women in Africa for systematic crimes of sexual violence.<sup>51</sup>

*ii. Coalition on Violence Against Women v. Attorney General of Kenya*

In December 2020, the High Court of Kenya heard *Coalition on Violence Against Women v. Attorney General of Kenya* and ruled that Kenya had violated provisions of the Maputo Protocol.<sup>52</sup> After the Kenyan national elections in December 2007, large parts of the country erupted into violence, with mass sexual violence perpetuated

47. Osai Ojigho, *A First for Women under the Maputo Protocol*, INSTITUTE FOR AFRICAN WOMEN IN LAW <https://www.africanwomeninlaw.com/posts/A-First-for-Women-under-the-Maputo-Protocol> (highlighting important case details).

48. See Omondi et al., *Breathing Life into the Maputo Protocol: Jurisprudence on the Rights of Women and Girls in Africa*, EQUAL. NOW, 68 (2018), [https://d3n8a8pro7vnm.cloudfront.net/equalitynow/pages/817/attachments/original/1543482389/Breathing\\_Life\\_into\\_Maputo\\_Protocol\\_Case\\_Digest-Jurisprudence\\_on\\_the\\_Rights\\_of\\_Women\\_and\\_Girls\\_in\\_Africa.pdf?1543482389](https://d3n8a8pro7vnm.cloudfront.net/equalitynow/pages/817/attachments/original/1543482389/Breathing_Life_into_Maputo_Protocol_Case_Digest-Jurisprudence_on_the_Rights_of_Women_and_Girls_in_Africa.pdf?1543482389) (reiterating the Court's findings).

49. See *9 Ways*, *supra* note 31.

50. See Ojigho, *supra* note 47 (detailing the compensation provided to the plaintiffs).

51. See *Celebrating the Maputo Protocol*, *supra* note 8 (highlighting the success of a regional instrument in securing the rights of women against sexual violence in an international African court).

52. *Coalition on Violence Against Women v. Attorney General of Kenya*, H.C.K., Const. and Hum. Rts. Div., Petition No. 122 of 2013, 1 (2020) [hereinafter *CVW v. AG Kenya*]; *Coalition on Violence Against Women and Others v. the Attorney-General of Kenya and Others: Victims of Sexual and Gender Based Violence Demand Accountability*, OPEN SOC'Y JUST. INITIATIVE <https://www.justiceinitiative.org/litigation/coalition-violence-against-women-and-others-v-attorney-general-kenya-and-others>.

against women and children.<sup>53</sup> Twelve petitioners brought a complaint against six respondents including the Attorney General of Kenya that, in addition to other issues, their rights to life, security of person, and remedies had been violated under Articles 4 and 25 of the Maputo Protocol.<sup>54</sup> The survivors argued that Kenya failed to provide restitution, general damages, medical or psychological care, or legal or social services in violation of Article 25.<sup>55</sup> The Court found that under Article 4 of the Maputo Protocol, sexual violence infringes on the right to life by citing the decision in *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, where the court found that rape violates the right to life.<sup>56</sup> Ultimately the Court found violations of Articles 4 and 25 for multiple petitioners and awarded monetary remedies to four survivors.<sup>57</sup>

### iii. *Equality Now v. Ethiopia*

Additionally, in *Equality Now v. Ethiopia*, the African Commission on Human and People's Rights ("The Commission") found that Ethiopia violated multiple provisions of the ACHPR—the charter to which the Maputo Protocol is attached.<sup>58</sup> In 2001, thirteen-

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53. See CVW Accountability, *supra* note 52 (explaining that within 72 hours over 600 women were treated at Nairobi Women's hospital, with eighty percent having been raped and half of rape victims being children).

54. See CVW v. AG Kenya, 6, 25, 29–30 (2020); see also Maputo Protocol, *supra* note 9, art. 11 (stating that every woman is entitled to rights to life, integrity, and security of person); see also Maputo Protocol, *supra* note 9, art. 25 (enumerating the rights of women to remedies).

55. CVW v. AG Kenya, 21 (2020).

56. See CVW v. AG Kenya, 25 (2020); see also *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, 1996 AIR 922 (affirming that the act of rape is beyond a sexual offense and includes an element of degradation and humiliation that interferes with basic human rights).

57. CVW v. AG Kenya, 37–38, 130–37 (2020) (finding on an individualized basis that remedies were appropriate when petitioners had been assaulted by police and no investigations or prosecutions had been initiated); *but see* CVW v. AG Kenya, 37 (2020) (ruling that petitioners who had not reported their assaults were not entitled to remedies under Article 25 of the Maputo Protocol).

58. *Equality Now v. Ethiopia*, ACHPR 341/2007 (2016); *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*, Communication 341/2007, INT'L NETWORK FOR ECONOMIC, SOC. & CULTURAL RTS., <https://www.escr-net.org/caselaw/2016/equality-now-and-ethiopian-women-lawyers-association-ewla-v-federal-republic-ethiopia> [hereinafter Int'l Network ESCR].

year-old survivor Woineshet Zebene Negash was abducted, raped, and forced to marry her assailant.<sup>59</sup> Ms. Negash escaped, and her assailant was sentenced to ten years imprisonment without parole.<sup>60</sup> However on appeal, the conviction was quashed by the High Court of Arsi Zone.<sup>61</sup> EWLA filed a complaint to the Commission on Ms. Negash's behalf against the government of Ethiopia after multiple appeals within Ethiopian courts failed.<sup>62</sup> Because Ethiopia was a non-party to the Maputo Protocol at the time, the Commission found that the Ethiopian government had violated multiple provisions of its parent charter, the ACHPR, by failing to protect against rape, abduction, and forced marriage.<sup>63</sup> While the holding of the case is narrowly tailored and, therefore, unlikely to create broad precedent on the facts, the Commission's finding for monetary compensation for the survivor departed from traditional reparations of declaratory relief and affirms survivors' rights to effective remedies.<sup>64</sup>

#### *iv. Habré v. Senegal*

Although the issue in the case of *Habré v. Senegal* did not consider violations of the Protocol, it set precedent with the procedure it implemented for establishing a specialized chamber and its status as the first case of universal jurisdiction to go to trial in Africa.<sup>65</sup> Mr. Habré, the dictator of Chad from 1982 through 1990,

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. Int'l Network ESCR, *supra* note 58.

64. See *Equality Now v. Ethiopia*, ACHPR 341/2007 (2016); see also Int'l Network ESCR, *supra* note 58 (detailing the monetary damages provided to victims).

65. See *Q&A: The Case of Hissène Habré Before the Extraordinary African Chambers in Senegal*, HUM. RTS. WATCH (May 3, 2016), <https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal> [hereinafter *Q&A Habré HRW*]; see also *Basic Facts on Universal Jurisdiction*, HUM. RTS. WATCH (Oct. 19, 2009), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction> (defining universal jurisdiction as when a state's judicial body asserts jurisdiction over a crime that was not committed within its territory, or by or against one of its nationals, and explaining that international custom allows universal jurisdiction to be applied to international atrocities as a mechanism for redress against severe crimes).

lived in exile in Senegal from the end of his reign until his trial for war crimes and crimes against humanity including murder, torture, and rape.<sup>66</sup> Beginning in 2000, several international efforts were made to bring Habré to justice.<sup>67</sup> After multiple failures by Belgium to induce Senegal to extradite Habré, Belgium brought the case of *Belgium v. Senegal* to the International Court of Justice (“ICJ”), which ruled in 2012 that Senegal had a responsibility to extradite or prosecute Habré.<sup>68</sup>

The AU’s position that African courts should adjudicate African issues required Senegal to prosecute Habré.<sup>69</sup> When Senegal introduced new legislation to fulfill its mandate, Habré filed a complaint to ECOWAS alleging that Senegal violated his right against retroactivity.<sup>70</sup> The legal principle of nonretroactivity states that a law can only be applied to an act that happens after the law is enacted, which would make any legislation passed by Senegal to grant itself jurisdiction over his case a violation.<sup>71</sup> In an unprecedented move, ECOWAS decided that Senegal was required to create an ad hoc special tribunal to prosecute Habré, the Extraordinary African Chambers (“EAC”).<sup>72</sup> Mr. Habré was

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66. See Q&A Habré HRW, *supra* note 65.

67. See *id.* (detailing Belgium’s efforts to extradite Habré after four citizens of Chadian descent filed suit in a Belgian court, and the AU’s call on Senegal to prosecute Habré after Senegal determined it did not have the authority to extradite him).

68. See *Belgium v. Senegal*, Judgment, 2012 I.C.J. ICJ GL No 144, ICGJ 437 (July 20) (holding Senegal responsible for extraditing or prosecuting Habré); see also Frédéric Foka Taffo, *The Hissène Habré Case*, ACCORD (Apr. 2015), <https://www.accord.org.za/conflict-trends/the-hissene-habre-case/> (explaining that the ICJ found under the U.N. Convention Against Torture that a state party’s obligations against an alleged offender are triggered regardless of nationalities or territories).

69. See Taffo, *supra* note 68 (stating that the AU requested Senegal to prosecute Habré “on behalf of Africa”).

70. See *Hissène Habré v. Republic of Senegal*, INT’L CRIMES DATABASE (Nov. 18, 2010), <http://www.internationalcrimesdatabase.org/Case/220> (explaining the methodology behind Habré’s complaint).

71. See *The Practical Guide to Humanitarian Law*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/non-retroactivity/> (explaining the applicability of the principle of nonretroactivity to international law).

72. See Taffo, *supra* note 68; see also CEDEAO/ECOWAS Ruling: *Hissein Habré v. Republic of Senegal*, HUM RTS. WATCH (Nov. 18, 2010),

prosecuted for crimes under the EAC Statute and the ACPHR.<sup>73</sup> Mr. Habré's prosecution demonstrates a shift within the AU system toward greater judicial accountability for serious crimes including sexual violence.<sup>74</sup>

### C. THE AFCHPR (AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS)

The AfCHPR was established under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights ("the African Court Protocol").<sup>75</sup> Since the African Court Protocol was entered into force on January 25, 2004, adoption among African states has remained split.<sup>76</sup> As of March 2018, thirty states have ratified the African Court Protocol.<sup>77</sup> Ethiopia is not a party to the African Court Protocol, which creates a question of what options are available for adjudicating its violations of the Maputo Protocol.<sup>78</sup>

### D. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Established on November 2, 1987 in Addis Ababa, Ethiopia, the Commission was established to protect human rights, promote human rights, and interpret the ACHPR.<sup>79</sup> The Commission is made up of eleven members elected by the AU Assembly for six-year

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<https://www.hrw.org/fr/news/2010/11/18/arret-cedeao/ecowas-ruling-hissein-habre-c-republique-du-senegal> (detailing how the EAC was formed for the purpose of prosecuting Habré).

73. Taffo, *supra* note 68; ECOWAS ruling Habré, *supra* note 72.

74. See Taffo, *supra* note 68 (highlighting the AU's shift away from non-interference).

75. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 10, 1998.

76. Omondi et al., *supra* note 48.

77. See *id.*

78. See *List of Countries Which Have Signed, Ratified, Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, AFRICAN UNION (June 15, 2017), [https://au.int/sites/default/files/treaties/36393-sl-protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoplesrights\\_on\\_the\\_estab.pdf](https://au.int/sites/default/files/treaties/36393-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf) [hereinafter *Countries AfCHPR*].

79. See *African Commission on Human and Peoples' Rights*, ACHPR, <https://www.achpr.org/aboutus>.

terms.<sup>80</sup> Even though Ethiopia ratified the ACHPR in 1998, which is the instrument that the Commission presides over, the fact that Ethiopia has not ratified the Protocol to the ACHPR on the Establishment of an African Court leaves a chasm between complaints of violations of the ACHPR and the Maputo Protocol, and the ability to bring justice through a judicial mechanism.<sup>81</sup>

Adjudication of serious international crimes in Africa is further stressed by strained relations between the AU and the International Criminal Court (“ICC”). Furthermore, Ethiopia is not a party to the Rome Statute, which grants the ICC jurisdiction.<sup>82</sup> The AU has been critical of the ICC’s strategy because all twenty-six prosecutions by the ICC to date have been of Africans, and only African leaders have ever been indicted by the court.<sup>83</sup> As a result of this criticism, in January 2017 the AU Assembly adopted a strategy of mass withdrawal from the Rome Statute.<sup>84</sup> Nevertheless, the majority of African parties to the Rome Statute maintained their commitments, and only Burundi, the Gambia, and South Africa withdrew from the agreement.<sup>85</sup> Ethiopia’s decision to not ratify the Rome Statute may indicate a preference for African solutions over a global international court.<sup>86</sup> Nevertheless, fifteen member states need to ratify the Malabo

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80. *See id.*

81. *See* Countries AfCHPR, *supra* note 78 (showing that Ethiopia has not ratified the Protocol to the ACHPR on the Establishment of an African Court).

82. *See Coalition for the International Criminal Court*, COAL. FOR THE ICC, <https://www.coalitionfortheicc.org/country/ethiopia> [hereinafter *Coalition for the ICC*].

83. *See* Rebecca J. Hamilton, *Africa, the Court, and the Council*, in Elgar Companion to the International Criminal Court (deGuzman & Oosterveld, eds.) (2020); *see also* Eki Yemisi Omorogbe, *The Crisis of International Criminal Law in African: A Regional Regime in Response?* 66 NETH. INT’L. L. REV. 287, 295 (2019) (explaining that the AU’s argument does not factor in that over half of the situations were referred by the states themselves).

84. *See* Omorogbe, *supra* note 83, at 296.

85. *See id.*

86. *Compare Coalition for the ICC*, *supra* note 82, with Dr. Jess Chella, *A Review of the Malabo Protocol on the Statute of the African Court of Justice and Human Rights – Part I: Jurisdiction over International Crimes*, ILA REP. (Apr. 1, 2021), <http://ilareporter.org.au/2021/01/a-review-of-the-malabo-protocol-on-the-statute-of-the-african-court-of-justice-and-human-rights-part-i-jurisdiction-over-international-crimes-jessie-chella/> (arguing that the AU’s efforts to exercise regional control over African issues over time can be traced from the creation of



Protocol on the creation of the African Court of Justice and Human Rights (“ACJHR”) for the treaty to enter into force, but thus far none have ratified it.<sup>87</sup>

#### E. BACKGROUND ON THE CONFLICT IN TIGRAY

The conflict in Tigray began on November 4, 2020 after an Ethiopian military base was bombed and federal forces moved into Tigray to retaliate against the TPLF.<sup>88</sup> Although the government originally denied it, Eritrean forces have worked in tandem with the Ethiopian military from the beginning of the conflict.<sup>89</sup> With the regions of Ethiopia sectioned in large part by ethnic identity, ethnic Tigrayans have enjoyed political and social dominance within the country for nearly three decades, despite making up about six percent of the country’s population.<sup>90</sup> However, with the election of Prime Minister Abiy in 2018 and the push for a centralized government, Oromo and Amhara leaders formed a joint coalition to shift political power.<sup>91</sup> Reports from Tigrayan civilians on the ground claim that the violence in Tigray is indiscriminate, with an intention by Ethiopian and Eritrean forces to ethnically cleanse the Tigrayan

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the African Court of Justice (ACJ) in 2000 to the establishment of the AfCHPR in 2004, to the attempt to merge the ACJ and AfCHPR into a new judicial body called the African Court of Justice and Human Rights through the Malabo Protocol of 2014), and Omorogbe, *supra* note 83, at 293 (explaining that the Malabo Protocol would grant the ACJHR jurisdiction over three categories of issues: (1) international human rights, (2) general matters including treaty disputes, and (3) international criminal law).

87. See Chella, *supra* note 86.

88. See Scott Neuman, *9 Things to Know About the Unfolding Crisis in Ethiopia’s Tigray Region*, NPR (Mar. 5, 2021), <https://www.npr.org/2021/03/05/973624991/9-things-to-know-about-the-unfolding-crisis-in-ethiopia-tigray-region> (explaining the central role that Tigray and the neighboring nation of Eritrea have played in Ethiopian hostilities since fighting began in November 2020).

89. See Houreld, *supra* note 5.

90. See Cara Anna, *‘Leave No Tigrayan’: In Ethiopia, an Ethnicity Is Erased*, ASSOCIATED PRESS (Apr. 7, 2021), <https://apnews.com/article/ethiopia-tigray-minority-ethnic-cleansing-sudan-world-news-842741eebf9bf0984946619c0fc15023> (explaining that soldiers offered to give a woman her home back and find her a husband if she claimed Amhara identity, but would continue to rape her if she claimed Tigrayan identity).

91. See Halakhe, *supra* note 2 (*describing the political repercussions of Prime Minister Abiy’s election in 2018*).

people.<sup>92</sup> The conflict is being considered an international crisis because an estimated 2.2 million people have been displaced from the Tigray region since the conflict began in November, with over sixty thousand people fleeing across the border into Sudan since March 2021.<sup>93</sup>

*i. Accounts of sexual violence*

More than 829 cases of sexual assault have been reported to five regional hospitals during a five-month period, which are estimated to be a severe underreporting of the actual number of sexual assaults.<sup>94</sup> Demand for testing for sexually transmitted diseases and emergency contraception at medical centers have gone up, which are signs of sexual violence in conflict zones.<sup>95</sup> While internet blackouts at the beginning of the conflict made it easier for Ethiopia to deny on-the-ground reports of violence against women, steady reports of rape against women and girls continue to be disclosed seven months into the conflict.<sup>96</sup>

Though the Ethiopian government contends that the TPLF is coaching women to report false narratives, in addition to harrowing narratives of gang rape, sexual torture, and exploitation, hospitals

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92. See Anna, *supra* note 90 (expressing the Tigrayans' assertion that Ethiopia is carrying out an ethnic cleansing of their people).

93. See *Over 2 Million People Displaced by Conflict in Ethiopia's Tigray Region* – *Local Official*, REUTERS (Jan. 6, 2021), <https://www.reuters.com/article/uk-ethiopia-conflict-idUSKBN29B1N7> (detailing that over half of internally displaced people fled their homes after they were burned down); see also Salma Ismail, *Thousands Flee Tigray Region to Sudan*, UNICEF (Mar. 10, 2021) <https://www.unicef.org/sudan/stories/thousands-flee-tigray-region-sudan> (explaining that initially 4,000 to 5,000 people were crossing into Sudan daily).

94. See Nichols, *supra* note 3.

95. See *'Disturbing' Rape Allegations in Ethiopia's Tigray Conflict*, AL JAZEERA (Jan. 22, 2021), <https://www.aljazeera.com/news/2021/1/22/disturbing-rape-allegations-in-ethiopia-tigray-conflict-un> (enumerating the reported and estimated sexual assaults in the Tigray region)..

96. See James Jeffrey, *Ethiopia's Tigray Conflict and the Battle to Control Information*, AL JAZEERA (Feb. 16, 2021), <https://www.aljazeera.com/news/2021/2/16/ethiopia-tigray-conflict-and-the-battle-to-control-information> (discussing how communications blackouts cut off internet and phone connections and impacted the ability of aid workers and journalists to investigate allegations of violence).

across Tigray have documented hundreds of cases of extreme sexual violence.<sup>97</sup> At a United Nations Security Council “UNSC” meeting on April 15, 2021, United Nations (“U.N.”) Emergency Relief Coordinator Mark Lowcock stated, “there is no doubt that sexual violence is being used in this conflict as a weapon of war, as a means to humiliate, terrorize, and traumatize an entire population today and into the next generation.”<sup>98</sup> The extreme uptick in reports of sexual violence in conjunction with civil unrest in Tigray indicate that sexual assaults are being used as a weapon of war.<sup>99</sup>

*ii. Ethiopian Human Rights Commission and AU independent investigation*

After international pressure, a joint probe into human rights violations was launched in March 2021 by the Ethiopian Human Rights Commission (“EHRC”) and the U.N. High Commissioner for Human Rights (“OHCHR”).<sup>100</sup> Additionally, the AU Commission on Human and Peoples’ Rights launched an independent investigation, which Ethiopia condemned as “lacking legal basis,” even though Ethiopia is a party to the ACHPR.<sup>101</sup> While Ethiopia argued that a

97. See Houreld, *supra* note 5 (explaining multiple stories of being kidnapped and gang raped by soldiers, and documentation from hospitals treating women and girls for severe internal injuries and tearing, removal of items from genitals such as nails and rocks, broken limbs and amputations, sexually transmitted infections, and unwanted pregnancies); see also Houreld, *supra* note 5 (quoting one doctor, “This is not for sexual gratification. The rapes are to punish Tigray . . . this is being done to dishonor the women, to break their pride”).

98. See Helen Clark, *In Tigray, Sexual Violence Has Become a Weapon of War*, FOREIGN POL’Y (Apr. 27, 2021), <https://foreignpolicy.com/2021/04/27/in-tigray-sexual-violence-has-become-a-weapon-of-war/> (describing the use of sexual violence as a weapon of war, and its effect on the future generation of Tigrayans).

99. See Houreld, *supra* note 5 (describing accounts of rape by members of the Ethiopian military as a war tactic).

100. See *Probe Announced into Alleged Tigray Rights Violations: UN Rights Office*, UNITED NATIONS (Mar. 25, 2021), <https://news.un.org/en/story/2021/03/1088272> (detailing the launch of the joint investigation).

101. See *African Union Launches Probe into Alleged Rights Abuses in Tigray*, AL JAZEERA (June 17, 2021), <https://www.aljazeera.com/news/2021/6/17/african-union-launches-probe-alleged-rights-abuses-tigray> [hereinafter AU Launches Probe] (describing Ethiopia’s condemnation of the independent investigation launched by the AU Commission on Human and Peoples’ Rights).

joint probe with the commission would be best, the AU body will continue its investigation independently.<sup>102</sup>

### III. ANALYSIS

Ethiopia violated the Maputo Protocol because it failed to protect African women from disproportionate violence and discrimination, and it failed to provide remedies for its violations under Articles 11 and 25.<sup>103</sup> The Maputo Protocol endeavors to respect the unique importance of women in Africa and to enumerate special protections of their human rights.<sup>104</sup> The Maputo Protocol is important because it is both one of the most specific international human rights instruments in operation, as well as one of the most underutilized.<sup>105</sup> The Maputo Protocol is valuable because it is specifically tailored to the experiences of African women and because each instance of its application by the AU and its member states signals to the international community their commitment to the rights of women in Africa.<sup>106</sup>

Ethiopia, a state party to the Maputo Protocol, acted in opposition to Article 11 by failing to protect hundreds of women and girls in Tigray from disproportionate gender-based violence including rape perpetuated by members of the Ethiopian military.<sup>107</sup> Ethiopia also

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102. *See id.*

103. *See* Maputo Protocol, *supra* note 9, preamble (stating the purpose of the Maputo Protocol).

104. *See* Maputo Protocol, *supra* note 9, art. 11; *see also supra* Part II (A)(a); Viljoen, *supra* note 7, (noting that in a progressive departure from CEDAW, the Protocol requires member states to take affirmative action to adopt measures favoring women above men in areas such as elections, literacy, and education to correct systemic discrimination).

105. *See* Omondi et al., *supra* note 48 (explaining that the foundation of the Maputo Protocol was built on existing human rights instruments such as CEDAW, the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), and the Universal Declaration of Human Rights (“UDHR”) to address issues faced by African women and girls).

106. *See 9 Ways*, *supra* note 31 (explaining that the Maputo Protocol has advanced the rights of women and girls in Africa on both a regional and national level across administrative, policy, and judicial means).

107. *See* Maputo Protocol, *supra* note 9, art. 11 (stating that a state party shall undertake to protect displaced women and girls from sexual exploitation during an armed conflict); *see also Ethiopia Tigray Region Humanitarian Update: Situation*

violated the Maputo Protocol by failing to provide remedies under Article 25 to women and girls whose rights against sexual violence were violated.<sup>108</sup>

A. ARTICLE 11 VIOLATION: FAILURE TO PROTECT WOMEN FROM  
SEXUAL EXPLOITATION

The report by hundreds of women that they have been raped by Ethiopian or Eritrean soldiers shows that Ethiopia is not only failing to protect women and girls from gender-based violence, but that it is also perpetuating it.<sup>109</sup>

As discussed in Part (A)(a), a Member State violates the Protocol when there is (1) a state's failure to protect an internally displaced person, (2) an act of sexual exploitation, (3) and a state's failure to bring the act to a competent criminal court as an atrocity.<sup>110</sup>

*i. Ethiopia failed to protect internally displaced women*

First, Ethiopia has not only failed to protect internally displaced persons, but it has also exacerbated the displacement of Tigrayan civilians to the extent that the amount of refugees fleeing the conflict zone has devolved into an international crisis.<sup>111</sup> Ethiopia failed to

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*Report*, OCHR (June 24, 2021), <https://reports.unocha.org/en/country/ethiopia/> (reporting 2.7 million people in Tigray have been targeted by OCHA as in need of aid in the form of protection, while OCHA reports only having reached five thousand of them, and citing harassment, intimidation, and detention of aid workers as well as confiscation of humanitarian supplies).

108. See Maputo Protocol, *supra* note 9, art. 25 (stating that a state party shall undertake to provide remedies for women whose rights under the Maputo Protocol have been violated).

109. See Houreld, *supra* note 5, (explaining that in response to comments on allegations of rape by Ethiopian soldiers, information minister Yemane Gebremeskel stated that the TPLF was coaching women to create false stories to cover up crimes committed by the TPLF).

110. See *supra* Part (A)(a); see also Maputo Protocol, *supra* note 9, art. 11 (detailing a state party's obligations to women in a conflict zone).

111. See Sarah Miller, David Del Conte, & Hardin Lang, *Time Is Running Out: Urgent Action Needed to Address Humanitarian Crisis in Tigray*, REFUGEES INT'L (Feb. 25, 2021), <https://www.refugeesinternational.org/reports/2021/2/24/time-is-running-out-urgent-action-needed-to-address-humanitarian-crisis-in-tigray> (explaining that the horn of Africa risks destabilization due to the impact of this crisis straining resources in neighboring Sudan—which has approximately 1 million refugees already and is in the middle of a delicate national transition to

protect the internally displaced people of Tigray because indiscriminate acts of war by the Ethiopian government have caused civilians to flee from their homes.<sup>112</sup> Furthermore, Ethiopia's failure to protect internally displaced persons during the Tigray conflict has a disproportionately negative effect on women and girls because they are more likely to be subjected to sexual violence.<sup>113</sup> The failure of the Ethiopian government to anticipate and deter sexual violence against women is similar to the situation in *Coalition on Violence Against Women*, where the complaint detailed the government's failure to anticipate and prepare proper law enforcement during a time of unrest without perpetuating gender-based violence.<sup>114</sup>

In *Coalition on Violence Against Women*, the High Court of Kenya found under Article 2 of the ICCPR that States have obligations to citizens to protect them from threats to their rights and that sexual violence is a threat to right to life under Article 4 of the Maputo Protocol.<sup>115</sup> The case of *Coalition on Violence Against Women v. Attorney General of Kenya* was filed by eight survivors of gender-based violence in tandem with an NGO working in support of female victims of violence.<sup>116</sup> The facts of the case are relevant to the situation in Tigray because the sexual violence occurred due to political unrest in the wake of the 2007 national election in Kenya.<sup>117</sup>

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democracy, entrenching conflict with Eritrea to the north, and the political situation in Somalia to the east remaining unstable and often violent).

112. See *Ethiopians Fleeing Tigray War Recount Horrors as Fighting Rages*, AL JAZEERA (Nov. 14, 2020), <https://www.aljazeera.com/news/2020/11/14/fleeing-war-ethiopians-recount-horror-of-tigray-violence> (stating that people fled the region due to bombings and shellings of their homes as well as massacres of civilians with knives and guns).

113. See Maputo Protocol *supra* note 9, art. 25; see also Zegeye, *supra* note 23 (arguing that enumerating the rights of women in Africa during armed conflicts and against sexual violence are paramount to the progression of human rights); Butegwa *supra* note 25 (explaining that action must be taken to protect women and girls who disproportionately suffer during conflict because of their gender).

114. See *Coalition on Violence Against Women v. Attorney General of Kenya*, H.C.K., Const. and Hum. Rts. Div., Petition No. 122 of 2013, 1 (2020) [hereinafter CVW v. AG Kenya] (submitting that the state failed to meet its due diligence to protect Kenyans and prevent violence under Article 4 of the Maputo Protocol).

115. *Id.* at 110–11, 113.

116. See *9 Way*, *supra* note 31 (detailing the history of the complaint).

117. See CVW v. AG Kenya, 13 (2020) (explaining that quickly after the presidential election, a wave of extreme violence descended across the country).

The complaint that Kenya failed to anticipate, prepare, respond to, or provide remedies for instances of rape, gang rape, forced pregnancy, mutilation, and other forms of sexual violence is similar to accounts from Tigray because of the brutality and volume of the reports of sexual violence by soldiers despite the stigma that comes with reporting.<sup>118</sup> The political unrest, violence, and lack of government response are all similar to the situation in Tigray, with the situation in Tigray being even more egregious because of the targeted nature of the violence against ethnically Tigrayan women and girls.<sup>119</sup> While the court in *Coalition on Violence Against Women* found that sexual violence by Kenyan officials was a violation under Article 4, which provides the right to life, Ethiopia violated Article 11 when its soldiers perpetuated sexual violence because the survivors' rights were violated during an armed conflict.<sup>120</sup> Thus, Ethiopia is in violation of Article 11 because, like Kenya failed to do in *Coalition on Violence Against Women*, Ethiopia failed to take steps to mitigate or prevent sexual exploitation of women in the conflict zone.<sup>121</sup>

Another key difference between *Coalition on Violence Against Women* and the situation in Tigray is that the petitioners in *Coalition* complained that the government solely failed to protect them from sexual violence, whereas many victims in Tigray are reporting that the government is perpetrating the sexual violence.<sup>122</sup> This difference

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118. See *id.* at 14 (likening the case of *Coalition on Violence Against Women v. Attorney General of Kenya* to accounts of rape from Tigray generally); see also Houreld, *supra* note 5 (discussing the stigma against women of reporting rape).

119. See Houreld, *supra* note 5 (comparing sexual violence in Ethiopia generally to sexual violence against women in Tigray specifically and distinguishing why the latter is even more egregious); see also Nichols, *supra* note 3; Kassa & Pujol-Mazzani, *supra* note 4 (explaining how the violence against women in Tigray is targeted).

120. See *Coalition on Violence Against Women v. Attorney General of Kenya*, H.C.K., Const. and Hum. Rts. Div., Petition No. 122 of 2013, 113 (2020) [hereinafter *CVW v. AG Kenya*] (holding that the defendant's violated Article 4 of the Maputo Protocol).

121. See *id.* (holding that sexual violence such as rape infringes on right to life).

122. See *id.* at 16 (stating that when ethnic violence erupted in the wake of national elections, many instances of sexual violence went unreported because survivors did not believe they would receive assistance and further categorizing the gender-based violence as contained to a short period of unrest); see also Houreld, *supra* note 5 (explaining that Ethiopian and Eritrean soldiers have been accused of

will likely necessitate the question of whether a state court is capable of adjudicating complaints from survivors, or whether a regional or international forum is necessary.

*ii. Ethiopia failed to protect Tigrayan women from sexual exploitation*

Second, Ethiopia perpetuated sexual violence. There are hundreds of reports of rape and other forms of gender-based violence against women and girls in Tigray.<sup>123</sup> Ethiopia is responsible for the sexual exploitation because the reports of rape demonstrate a systematic methodology to the acts of violence being carried out by government agents.<sup>124</sup> Ethiopia's failure to prevent acts of sexual violence is also evident because demand for emergency contraceptives and testing for sexually transmitted infections have increased at medical centers across Tigray.<sup>125</sup>

The facts in the case of *Njemanze v. Nigeria* are similar to reports of sexual violence coming out of Tigray because in both instances there are reports of women being detained by government forces,

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kidnapping women and keeping them in sexual slavery at military camps with other female captives); Nichols, *supra* note 3 (stating that many reports from victims involve descriptions of men in uniform and nearly a quarter of the reports involve circumstances of gang rape).

123. See UNSC 'Deep Concern' About Sexual Violence Allegations in Tigray, AL JAZEERA (Apr. 22, 2021), <https://www.aljazeera.com/news/2021/4/22/un-security-council-concerned-about-tigray-humanitarian-situation> (stating that the UNSC deems violations of human rights of women and girls through sexual violence intolerable and those responsible "must be held accountable"); Houreld, *supra* note 5 (explaining that sexual violence is being used as a weapon of war); see also Nichols, *supra* note 3 (arguing that rapes are occurring at the hands of the Ethiopian military); Kassa & Pujol-Mazzani, *supra* note 4 (explaining that rape and transmission of sexually transmitted diseases are a form of ethnic cleansing).

124. See John Sparks, *Ethiopia's Conflict in Tigray: Women Describe How Rape Is Used as a Weapon*, SKY NEWS (Mar. 27, 2021), <https://news.sky.com/story/ethiopias-conflict-in-tigray-women-describe-how-rape-is-used-as-a-weapon-12257465> (citing reports by women being treated at the general hospital in Adigrat of gang rape at the hands of Ethiopian and Eritrean soldiers, in many cases involving dozens of men and lasting multiple days, as a means of punishment and degradation).

125. See Miller et al., *supra* note 111 (stating that no matter who is responsible for committing acts of gender-based violence, it is the responsibility of Ethiopia to protect its citizens from such acts).



without cause, and sexually exploited or raped.<sup>126</sup> Like how Ms. Njemanze was threatened with arrest under a prostitution charge when she attempted to file a complaint to the police within Nigeria, women in Tigray are also afraid to come forward.<sup>127</sup> Similarly to the cases in Tigray, all four plaintiffs in *Njemanze* were subjected to abduction, unlawful detention, harassment, and sexual exploitation by government forces.<sup>128</sup> The finding in *Njemanze* that Nigeria failed to promote and protect the rights of the plaintiffs under the Maputo Protocol should also be applied to Ethiopia because women have been abducted, sexually exploited, and humiliated in a similar way, but on a much larger scale.<sup>129</sup> Similarly to how the Court in *Njemanze* found the conduct of the Nigerian Military and Nigerian Police to be degrading, inhumane, and discriminatory, Ethiopia should also be held accountable for the intentionally cruel and dehumanizing acts of sexual violence committed by its soldiers.<sup>130</sup> Furthermore, the sexual exploitation of women in girls in Tigray is a violation of Article 11 of the Maputo Protocol because Ethiopia is

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126. See *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017); Omondi et al., *supra* note 48, at 25–26 (detailing that three of the plaintiffs were abducted by the Abuja Environmental Protection Board (AEPB), detained, and sexually assaulted, and when Ms. Njemanze attempted to secure their release, she was verbally, physically and sexually harassed by members of the AEPB, Nigerian Police, and Nigerian Military); see also Nichols, *supra* note 3 (stating that men in uniform are committing acts of sexual violence); Kassa & Pujol-Mazzani, *supra* note 4 (detailing the account of a woman that five Ethiopian federal soldiers came to her home, shot her brother in the head, and raped her).

127. See Omondi et al., *supra* note 48, at 25 (detailing that instead of taking her account seriously, police at the Maitama Police Station threatened to arrest Ms. Njemanze for allegedly looking like a prostitute); see also *UN Security Council: End Inaction on Ethiopia*, HUM RTS. WATCH (July 2, 2021), <https://www.hrw.org/news/2021/07/02/un-security-council-end-inaction-ethiopia#> [hereinafter *UNSC End Inaction*](stating that OCHA found at least 504 instances of gender-based violence in Tigray in May alone and that survivors report being afraid to come forward because the perpetrators are often federal military soldiers).

128. See *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017) (reporting that all four plaintiffs were abducted, beaten, and groped, and that multiple men took photos of and inserted their fingers inside the vagina of one plaintiff).

129. See *id.* (detailing the case of four plaintiffs); see also Kassa & Pujol-Mazzani, *supra* note 4 (stating hundreds of women and girls in Tigray have been sexually exploited by the Ethiopian military).

130. See *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017); Nichols, *supra* note 3 (documenting the volume of sexual exploitation in Tigray).

using the sexual exploitation of women to further its strategy during an armed conflict.<sup>131</sup>

Considering the resemblance of the facts in *Njemanze* to many of the reports of sexual violence in Tigray, the successful application of the Maputo Protocol in this case suggests that the instrument could successfully be applied as a means for justice against sexual violence in the Tigray conflict.<sup>132</sup> The other key implication in *Njemanze v. Nigeria* is that it is the first example of a regional court in Africa deciding a case by applying the Maputo Protocol, which is positive in the sense that it creates precedent for further application of the protocol.<sup>133</sup> However, it also creates procedural questions for establishment of jurisdiction by regional courts.<sup>134</sup> Furthermore, access to justice for survivors through the ECOWAS court was more straightforward than similar regional courts because applicants are not required to demonstrate that they have exhausted local remedies before bringing an issue to the court.<sup>135</sup>

Additionally, the case can be viewed as a landmark ruling on the rights of women in Africa because of its application of the Maputo Protocol.<sup>136</sup> With regard to the implications of this case on justice for

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131. See Clark, *supra* note 98 (stating that sexual violence is being used as a weapon to humiliate a generation).

132. See *Njemanze v. Nigeria*, ECW/CCJ/JUD/08/17 (2017) (explaining that the court found that the failure to investigate and prosecute responsible parties was a failure by the state, and that discrimination and degrading treatment had occurred in violation of the Maputo Protocol).

133. See *First Pronouncement on MP*, *supra* note 45 (“[T]his is the first time an international court has pronounced on violations of the Maputo Protocol.”).

134. See *id.* (noting the importance of the decision as the first ruling on a violation of the Maputo Protocol); but see Sègnonna Horace Adjolohoun, *The Njemanze ECOWAS Court Ruling and “Universal” Jurisdiction: Implications for the “Grand African Human Rights System”*, I CONNECT BLOG OF THE INT’L J. OF CONST. L. (Nov. 16, 2017), <http://www.iconnectblog.com/2017/11/the-njemanze-ecowas-court-ruling-and-universal-jurisdiction-implications-for-the-grand-african-human-rights-system/> (stating that while *Njemanze v. Nigeria* legitimized the ability of ECOWAS to rule on violations of the Maputo Protocol, the manner in which ECOWAS claimed jurisdiction gives rise to potential issues of concurrent jurisdiction or duplication of forum).

135. See Ojigho, *supra* note 47 (“[U]nlike similar regional or continental courts, [the ECOWAS Court] did not insist for applicants to show that they had exhausted local remedies before bringing a matter before it.”).

136. *Contra* Ciara O’Connell, *Reconceptualising the First African Women’s*

survivors in Tigray, it is an affirmation that the Maputo Protocol is a working instrument for safeguarding women's rights and securing financial remedies.<sup>137</sup> However, while ECOWAS is the first regional court to rule on a violation of the Maputo Protocol, it does not have jurisdiction over the events in Tigray.<sup>138</sup>

*iii. Ethiopia failed to bring acts of sexual violence before a competent criminal court*

Third, Ethiopia has not held itself accountable before a competent criminal court for sexual violence in Tigray, and it is unlikely to do so without external pressure. For months Ethiopia denied that it was working in tandem with the Eritrean military in Tigray despite eyewitness reports.<sup>139</sup> Despite initially denying that Ethiopian soldiers were perpetrating crimes of sexual violence in Tigray, Ethiopia has only taken the minor step of convicting three soldiers of rape and pressing charges against twenty-five more for crimes of rape or sexual violence.<sup>140</sup> Considering Ethiopia's proven reluctance

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*Protocol Case to Work for All Women*, 19(1) AFR. HUM. RTS. L. J. 510, 518–20 (2019) (arguing that the reasoning of the court concludes that patrolling for and arresting women in a discriminatory manner is only unacceptable because they are not sex workers, which misses the important opportunity to protect the dignity and human rights of sex workers).

137. See *First Pronouncement on MP*, *supra* note 45 (celebrating the utilization of the Maputo Protocol).

138. See *Basic Information*, ECOWAS, <https://www.ecowas.int/about-ecowas/basic-information/> (detailing that the fifteen West African member states that make up ECOWAS are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal, and Togo).

139. See Ayenat Mersie, *Four Ethiopian Soldiers Convicted of Crimes against Civilians in Tigray*, REUTERS (May 21, 2021), <https://www.reuters.com/world/africa/four-ethiopian-soldiers-convicted-crimes-against-civilians-tigray-2021-05-21/> (explaining that the convictions came after mounting pressure from the international community); see also Michelle Nichols, *Eritrea Admits Presence in Ethiopia's Tigray, Tells U.N. Withdrawing*, REUTERS (Apr. 16, 2021), <https://www.reuters.com/world/africa/eritrea-admits-presence-ethiopias-tigray-tells-un-withdrawing-2021-04-16/> (clarifying that despite efforts by the Ethiopian and Eritrean governments to obscure Eritrea's presence in Tigray, and Eritrea's promise to retreat under international pressure, neither the U.N. nor humanitarian agencies have seen actions toward fulfilling this commitment) [hereinafter Nichols on Eritrea].

140. See Andrew Meldrum, *Ethiopia Convicts 3 Troops of Rape, Charges 28 for*

to hold perpetrators of rape in Tigray responsible, international pressure, including investigations by multiple international bodies, and the staggering volume of account of sexual violence, Ethiopia is in violation of its responsibilities under Article 11 by failing to bring crimes of sexual exploitation before a competent criminal court as atrocities.<sup>141</sup>

While the case of *Habré v. Senegal* does not contain a question of a violation of the Maputo Protocol, it is the first case in Africa to apply universal jurisdiction through the creation of a specialized chamber.<sup>142</sup> The collaboration of the AU with Senegal in the creation of the Extraordinary African Chambers (EAC) creates a new model for adjudicating crimes against humanity in Africa.<sup>143</sup> The call for Senegal to prosecute Habré on behalf of Africa is similar to the sentiment used by Prime Minister Abiy in his reasoning as to why Ethiopia should be allowed to lead investigations into sexual violence in Tigray—the sentiment of “African Solutions to African

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*Killing*, ASSOCIATED PRESS (May 21, 2021), <https://apnews.com/article/ethiopia-africa-biden-cabinet-fd55227a53bb344520fc5358dbf69dd5> (stating that Ethiopia’s military prosecutors brought charges against twenty-eight additional suspects after six months and hundreds of reports of sexual violence).

141. See Mersie *supra* note 139 (noting that Ethiopia faces ‘increasing pressure to demonstrate accountability as reports of atrocities in Tigray mount’); see also Goitom Gebreluel & Mulu Beyene, *Why the Tigray Investigation Should Be Conducted by the UN Alone*, AFRICAN ARGUMENTS (Mar. 25, 2021), <https://africanarguments.org/2021/03/why-the-tigray-investigation-should-be-conducted-by-un-alone/> (stating that a joint investigation will take place between the UNHCR and the Ethiopian Human Rights Commission); AU Launches Probe, *supra* note 101 (explaining that the AU has created a commission to conduct an independent investigation into allegations of human rights abuses in Tigray, a move that the Ethiopian government calls “misguided”); *Press Statement on the Official Launch of the Commission of Inquiry on the Tigray Region in the Federal Democratic Republic of Ethiopia*, AFRICAN COMM’N ON HUM. AND PEOPLES’ RTS. (June 18, 2021), <https://www.achpr.org/pressrelease/detail?id=583> [hereinafter ACHPR *Commission of Inquiry*] (stating that the purpose of the Commission of Inquiry is an independent and neutral fact-finding mission in Tigray into violations of international human rights law and international humanitarian law over a period of three months with an option to renew).

142. See Q&A Habré HRW, *supra* note 65 (noting that the use of universal jurisdiction is an important tool in the international community for countering impunity for war crimes, crimes against humanity, and genocide).

143. See *id.* (positing that the trial of Habré is a monumental step for Africa in prosecuting international crimes because it is the first of its nature).

problems,” which represents an attitude against outside interference.<sup>144</sup> However, the concerns of the international community around biases created by internal investigations are valid. Because Ethiopia is not a party to the Rome Statute nor the Protocol on the African Court, and that the Malabo Protocol on the ACJHR has not yet been entered into force, the precedent created in *Habré* of making a specialized chamber within a third-party AU Member State’s judicial system may be the only option for prosecuting complaints against Ethiopia for violations of the Maputo Protocol in Tigray through crimes of sexual violence.<sup>145</sup>

Nevertheless, it is important to note that the case of *Habré* was an issue of a former head of state personally carrying out crimes against humanity.<sup>146</sup> The situation in Tigray differs from the case of *Habré* because the reports in Tigray are against active members of the military, not a former head of state.<sup>147</sup> Yet, the collaboration of the AU and Senegal to open the EAC and bring Habré to justice using universal jurisdiction is a seminal move in the development of African leadership in protecting human rights, and creates greater opportunity for prosecuting complaints of state sanctioned sexual violence arising out of Tigray.<sup>148</sup>

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144. See Taffo, *supra* note 68 (explaining that the desire of the AU to prosecute Habré within Africa was the backdrop for its proposal to create specialized chambers within the court system of Senegal to try the dictator); see also Chidi Anselm Idinkalu, *Investigating Atrocities in Ethiopia’s Civil War*, WORLD PEACE FOUND. (Mar. 11, 2021), <https://sites.tufts.edu/reinventingpeace/2021/03/11/investigating-atrocities-in-ethiopias-civil-war/> (explaining Prime Minister Abiy issued a statement that attempts by the wider international community to launch investigations into the situation in Tigray were an attempt to, “cultivate division amongst us as Africans”); Hamilton, *supra* note 83 (arguing that the delegitimization of a judicial body is a common tactic when powerful people are under scrutiny).

145. See Taffo, *supra* note 68 (noting that the EAC should be seen as a starting point for the African criminal justice system).

146. See Q&A Habré HRW, *supra* note 65 (explaining that Habré was the leader of a government directly responsible for political killings and torture and that he was personally responsible for carrying out multiple atrocities).

147. See Kassa & Pujol-Mazzani, *supra* note 4 (reporting acts of sexual violence by members of the military).

148. See Taffo, *supra* note 68 (stating that the EAC is a precursor to the establishment of a permanent court in Africa for international crimes and human rights violations); but see Idinkalu, *supra* note 144 (arguing that the level of

B. ARTICLE 25 VIOLATION: FAILURE TO PROVIDE REMEDIES TO  
TIGRAYAN WOMEN

As of July 2021, there have been no instances of declaratory relief or compensation for victims of sexual violence by members of the Ethiopian military during the Tigray conflict.<sup>149</sup> Despite documented treatment of hundreds of women and girls for sexual assault, Ethiopia's information minister Yemane Gebremeskel maintained that the TPLF was coaching people to create false narratives to divert attention from their own acts.<sup>150</sup> This violates Article 25 of the Maputo Protocol because it is a failure to provide remedies for women and girls who have been violated under Article 11 of the protocol.<sup>151</sup> Furthermore, Ethiopia is in violation of Article 25 because it has failed to ensure that a competent judicial, administrative, or legislative authority determine proper remedies for survivors of sexual violence during the Tigray conflict.<sup>152</sup>

The ruling in *Coalition on Violence Against Women* supports the argument that a state's failure to provide remedies for survivors of sexual violence violates Article 25 of the Maputo Protocol.<sup>153</sup> The decision was landmark in its treatment of remedies because the court found that Kenya had violated Article 25 of the Maputo Protocol, and it ruled that financial compensation was an appropriate remedy

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diplomacy required for the African Union to ensure cooperation between Ethiopia, Eritrea, and the TPLF is beyond the scope of the AU's wherewithal and will require greater international involvement, including that of the UNHCHR).

149. See Mersie, *supra* note 139 (detailing that the only judicial action thus far has been the conviction of four soldiers).

150. See Houreld, *supra* note 5 (providing a written statement from Gebremeskel that reports of rape by Eritrean troops were "fabricated stories").

151. See Maputo Protocol, *supra* note 9, art 25(1) (States parties undertake to "provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated").

152. See Mersie, *supra* note 139 (stating that the attorney general's office released differing statements on the extent of violence perpetrated by Ethiopian and Eritrean forces as international attention to the conflict created greater pressure).

153. See *Coalition on Violence Against Women v. Attorney General of Kenya*, H.C.K., Const. and Hum. Rts. Div., Petition No. 122 of 2013, 130 (2020) [hereinafter *CVW v. AG Kenya*] (stating that the Maputo Protocol protects the rights to remedies from a high court).

for the fifth, sixth, eighth, and ninth petitioners.<sup>154</sup> The decision awarding four survivors the equivalent of \$40,000 USD in damages is a turning point in the application of Article 25 of the protocol because declarative judgments have traditionally been considered sufficient remedies for rape.<sup>155</sup> The trend toward monetary damages as a proper remedy for issues of forced abduction and rape is also affirmed by the 2015 decision in *Equality Now v. Ethiopia*.<sup>156</sup> Considering the mass amount of reports of rape and sexual violence in Tigray, Coalition asserts the concept that acts of rape violate human rights, and that the Maputo Protocol is the correct instrument to affirm this concept.<sup>157</sup>

#### IV. RECOMMENDATIONS

There are a number of ways Ethiopia and the AU can address the crisis of sexual violence against women and girls in Tigray.<sup>158</sup> Considering Ethiopia has claimed that Eritrean forces have withdrawn from Tigray despite no evidence of troops exiting, Ethiopia should ensure the withdrawal occurs.<sup>159</sup> Ethiopia should also address systemic acts of sexual violence in its military through training and education.<sup>160</sup> Furthermore, Ethiopia should ratify the

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154. See Maputo Protocol, *supra* note 9, art. 25 (providing remedies for women whose freedom has been violated).

155. See *CVW v. Kenya*, 129–38 (2020) (awarding monetary damages to multiple survivors).

156. See *Equality Now v. Ethiopia*, ACHPR 341/2007 (2016) (awarding \$150,000 USD in damages in a decision narrowly tailored to the specific facts of a thirteen-year-old being subjected to abduction, rape, and forced marriage).

157. See *Omondi et al.*, *supra* note 48, at 68, 101 (stating that the Maputo Protocol requires states parties to take action to prevent violence against women, punish violators or laws against such atrocities, and provide reparations).

158. See *supra* Part IV (discussing the recommended action steps Ethiopia should take with the AU and AfCHR to protect women and girls from sexual violence during conflict).

159. See *Nichols on Eritrea*, *supra* note 139 (stating that there continue to be no signs of withdrawal of Eritrean troops).

160. See Emmanuel Akinwotu, 'Like I wasn't a Person': Ethiopian Forces Accused of Systematic Rape in Tigray, *GUARDIAN* (Aug. 11, 2021) <https://www.theguardian.com/global-development/2021/aug/11/like-i-wasnt-a-person-ethiopian-forces-accused-of-systematic-in-tigray> (explaining that the Ethiopian government is calling on all abled-bodied men to join a military accused of systematic rape and sexual violence).

Protocol on the Establishment of the Court to the ACHPR.<sup>161</sup> Additionally, the AU should ensure an independent investigation is thoroughly carried out through the Commission of Inquiry.<sup>162</sup> Finally, the AU should urge all member states to sign the Protocol on the Establishment of the Court to the ACHPR, which would create a permanent AU criminal court on human rights issues.<sup>163</sup>

#### A. ETHIOPIA SHOULD WITHDRAW ERITREAN TROOPS FROM TIGRAY

Ethiopia should work to immediately ensure that Eritrean troops withdraw from Tigray. A large portion of the accounts of sexual violence involve Eritrean soldiers.<sup>164</sup> The presence of Eritrean forces in Tigray undermines the possibility of peace talks between the TPLF and the Ethiopian government because of the Eritrean government's view of the TPLF and isolation within the international community.<sup>165</sup> Considering the brutality and volume of reports of violence perpetrated by Eritrean forces, the Tigray region will remain in conflict until the Eritrean troops withdraw as already promised.<sup>166</sup>

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161. See Julitta Onabanjo, *Ethiopia: UNFPA Calls for the Protection and Justice for Women and Girls in Tigray*, UNITED NATIONS (July 15, 2021), <https://www.un.org/africarenewal/magazine/july-2021/ethiopia-unfpa-calls-protection-and-justice-women-and-girls-tigray> (describing that the effects on women and girls of surviving sexual violence include fear and trauma that prevent them from taking care of their children, supporting families, or contributing to society, and additionally that women and girls fear seeking food and healthcare services due to fear of further sexual violence).

162. See ACHPR *Commission of Inquiry*, *supra* note 141 (discussing the role of the Commission of Inquiry, and the plans to investigate massive human rights violations).

163. See Omondi et al., *supra* note 48. (showing that only 30 member states have signed the Protocol on the Establishment of the Court to the ACHPR).

164. See Rodney Muhumuza 'Our Season': *Eritrean Troops Kill, Rape, Loot in Tigray*, ASSOCIATED PRESS (May 28, 2021), <https://apnews.com/article/only-on-ap-eritrea-africa-religion-9fe9140b76da946e4fa65095a1d5b04f> (detailing that some of the most horrific instances of gang rape and sexual violence have been at perpetrated by Eritrean troops, and stating that journalists have been harassed and intimidated by the Eritrean military).

165. See Houreld *supra* note 5 (stating that one doctor's account was that it was more common to receive reports of sexual violence perpetrated by Eritrean soldiers).

166. See Lucy Kassa, 'A Tigrayan Womb Should Never Give Birth': *Rape in Tigray*, AL JAZEERA (Apr. 21, 2021),



If Prime Minister Abiy is committed to finding a peaceful resolution to the conflict in Tigray internal, the withdrawal of Eritrean troops should be one of the first and most meaningful steps toward resolution.<sup>167</sup> Additionally, ensuring Eritrean troops withdraw from Tigray would help Ethiopia comply with the Maputo Protocol because it would increase the likelihood that women would be protected from sexual exploitation and that stability could return to the region.<sup>168</sup> It would also signal to the international community that the Ethiopian government is committed to peace in Tigray.<sup>169</sup>

B. ETHIOPIA SHOULD SYSTEMATICALLY CONDEMN VIOLENCE  
AGAINST WOMEN AND TRAIN ITS MILITARY AGAINST SEXUAL  
EXPLOITATION

Additionally, Ethiopia should train its military against sexual violence and implement policies to systematically reduce instances of sexual violence by its agencies. The volume of reports of rape by Ethiopian soldiers in Tigray makes it clear that gender-based

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<https://www.aljazeera.com/news/2021/4/21/a-tigrayan-womb-should-never-give-birth-rape-in-ethiopia-tigray> (documenting that Eritrean soldiers gang-raped a 21-year-old woman, then burned her genitals with hot metal, a tactic used systematically in Tigray to render women infertile).

167. See Abdullatif Dire, *Dear Prime Minister Dr. Abiy Ahmed: Dialogue Does Not Mean Defeat. Please Pursue It!*, ETHIOPIA INSIGHT (July 19, 2021), <https://www.ethiopia-insight.com/2021/07/19/dear-prime-minister-dr-abiy-ahmed-dialogue-does-not-mean-defeat-please-pursue-it/> (arguing that if Abiy can win the Nobel Peace Prize for resolving the conflict with Ethiopia's former archenemy, Eritrea, Abiy is able to lead peace and reconciliation efforts with Tigray).

168. See Michelle Nichols, *Ethiopia U.N. Envoy Says Eritrea Troops to Leave Tigray 'Soon'*, REUTERS (June 16, 2021), <https://www.reuters.com/world/africa/ethiopia-un-envoy-says-eritrea-troops-leave-tigray-soon-2021-06-15/> (explaining that Eritrean forces agreed to begin withdrawing from Tigray in April while rejecting allegations of sexual violence by Eritrean soldiers as "outrageous," with the Ethiopian ambassador to the U.N. stating that the withdrawal required sorting out of procedural and technical issues, but that the Tigray situation did not warrant attention from the Security Council).

169. U.N. SCOR, 8812th mtg. PM, U.N. Doc. SC/14572 (July 2, 2021), (detail the Security Council's concern for the crisis in Tigray with regard to the displacement of 1.7 million people, over 60,000 refugees having fled into Sudan, and human rights violations, with Acting Under-Secretary-General of Humanitarian Affairs and Emergency Relief Coordinator, Remesh Rajasingham, stating that, "the only way to stop the humanitarian situation from further deteriorating is peace.").

violence is institutional and systematic within the Ethiopian military.<sup>170</sup> Affirmative steps, including education, training, shifts in cultural norms, and punitive recourse, must be taken within the Ethiopian military to ensure that systematic gender-based violence is quashed and past instances are prosecuted.<sup>171</sup> Punitive action for sexual harassment or violence is necessary, but inadequate without a cultural shift in treatment of and respect for all women.<sup>172</sup>

### C. ETHIOPIA SHOULD RATIFY THE PROTOCOL ON THE ESTABLISHMENT OF A COURT TO THE ACHPR

The strength of the AU is only as great as the readiness of its member states to participate in its treaties and judicial bodies.<sup>173</sup> While the international community has historically been critical of the AU's approach to non-interference, the AU has made important strides in recent years to prioritize the importance of human rights on the continent, and needs the participation of its member states to affirm these priorities.<sup>174</sup> In addition to Ethiopia ratifying the Protocol on the Establishment of the Court to the ACHPR, the AU should strongly encourage all its member states that are non-parties to the Protocol on the Court to ratify the protocol.<sup>175</sup> Member state

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170. See Heather Murdock, *Hundreds of Women, Girls Brutalized by Soldiers in Tigray*, VOA (July 7, 2021), <https://www.voanews.com/ethiopia-tigray/hundreds-women-girls-brutalized-soldiers-tigray-war-0> (documenting many account by Tigrayan women of soldiers coming to their homes, claiming their husbands are TPLF fighters, and raping them); see also UNSC *End Inaction*, *supra* note 127 (explaining how fears of retribution keeps survivors from coming forward with reports of sexual violence).

171. See Murdock, *supra* note 170 (stating that three soldiers were convicted of rape in May, and dozens of others have been indicted, but most cases of sexual violence have not been answered for).

172. See Onabanjo, *supra* note 161 (detailing how gender-based sexual violence negatively impacts society as a whole).

173. See Countries AfCHPR, *supra* note 78 (showing that only thirty member states have ratified the Protocol on the Establishment of the Court to the ACHPR, which undermines the ability of the court to adjudicate crimes across Africa).

174. See *Non-Interference to Non-Indifference*, *supra* note 38 (stating that efforts by member states of the AU to build on documents and create frameworks for decision-making on interventions into international crimes will aid regional progress).

175. See *Guide to International Procedures Available in Cases of Human Rights Violations in Africa: African Court on Human and Peoples' Rights*, CLAIMING

participation in regional courts of justice is a crucial component of protecting human rights in Africa.<sup>176</sup>

#### D. THE AU SHOULD PROTECT WOMEN AGAINST SEXUAL VIOLENCE IN ETHIOPIA AND BEYOND

The AU should ensure that the Commission of Inquiry remains independent and unbiased in its investigation and place prosecution of perpetrators of crimes of sexual violence on equal footing as prosecuting other atrocities.<sup>177</sup> The AU should not bow to Ethiopia's requests that the Commission of Inquiry work in tandem with the Ethiopian Human Rights Commission because there are valid international concerns that the EHRC will not conduct an unbiased investigation in Tigray.<sup>178</sup> The AU should also consider its growing tool box of procedure and encourage its member states to pass legislation promoting the use of universal jurisdiction for war crimes, crimes against humanity, and genocide.<sup>179</sup> Lastly, the AU should consider urging member states to pass legislation that would ease the

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HUM. RTS., [http://www.claiminghumanrights.org/au\\_court.html](http://www.claiminghumanrights.org/au_court.html) (explaining that the relationship between the Commission and the AfCHPR has become more intertwined over time, and they have become complementary bodies).

176. See *Fact Sheet: African Court on Human and Peoples' Rights*, JUSTICE INITIATIVE, <https://www.justiceinitiative.org/publications/african-court-human-and-peoples-rights> (stating that member states to the jurisdiction of the Court must comply with a judgement in a case to which they are a party).

177. See Fasil Hailu, *The African Union Must Intervene to Stop the War in Ethiopia*, ETH. INSIGHT (July 25, 2021), <https://www.ethiopia-insight.com/2021/07/25/the-african-union-must-intervene-to-stop-the-war-in-ethiopia/> (stating that the AU has a particularly precarious position to remain unbiased to Ethiopia because capital city, Addis Ababa, has been the longtime seat of the AU, and Ethiopia enjoys the deeply African position of being the only AU state without a colonial history).

178. See Cara Anna, *Ethiopia Urges Tigray Rights Inquiry to 'Immediately Cease'*, ASSOCIATED PRESS (July 17, 2021), <https://apnews.com/article/africa-ethiopia-f50538ec62bfa7c83a1114a385a25c91> (stating that commissioner Maya Sahli-Fadel said that Ethiopian government involvement in the probe would "alter and dilute the independence of the commission").

179. See *Observations of the African Union on the Scope and Application of the Principle of Universal Jurisdiction*, AFRICAN UNION, [https://www.un.org/en/ga/sixth/75/universal\\_jurisdiction/au\\_e.pdf](https://www.un.org/en/ga/sixth/75/universal_jurisdiction/au_e.pdf) (explaining that the AU recognizes universal jurisdiction as an important tool in bringing justice for atrocities, and reaffirming its belief that universal jurisdiction must be applied in conjunction with obligations under customary international law).

procedure of creating specialized chambers similar to the EAC; however, it would be a better long-term strategy for the AU to act in the interest of promoting the development of permanent courts on human rights and international crimes.<sup>180</sup>

Therefore, the AU should urge its member states to ratify the Malabo Protocol and bring into force the international criminal arm of the African Court of Justice and Human Rights, which will establish a criminal arm for this court, and provide a venue to serve justice for survivors of sexual violence.<sup>181</sup>

## V. CONCLUSION

Ethiopia has a responsibility to protect all women and girls from gender-based violence regardless of their ethnicity, even in the circumstance of armed conflict.<sup>182</sup> As a party to the Maputo Protocol and a member of the AU, Ethiopia's explicit obligations to women and girls are even greater than countries on other continents.<sup>183</sup> Nevertheless, reports of mass sexual violence in Tigray have made it clear that women and girls are facing an extreme amount of sexual violence, and that it is being perpetuated by Ethiopia's military.<sup>184</sup>

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180. Compare Taffo *supra* note 68 (explaining that the EAC is a successful precursor in the direction of the AU creating a permanent criminal court), with Q&A Habré HRW, *supra* note 65 (emphasizing how the use of universal jurisdiction in European courts over the last twenty years can inform the AU's ability to bring justice for serious atrocities).

181. See *Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court*, AMNESTY INT'L, <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR0161372017ENGLISH.pdf> (explaining that the Malabo Protocol expands the proposed African Court of Justice and Human Rights to contain an international criminal court under which human rights abuses such as rape and gender-based violence could be tried).

182. See Zegeye, *supra* note 23 (explaining that the acceptance of the Convention means ending legal discrimination against women and girls and taking any additional steps necessary to end gender-based discrimination); Maputo Protocol, *supra* note 9, art. 11 (identifying the responsibility that Ethiopia has to its women and girls in providing legal protection and support of their human rights).

183. See Zegeye, *supra* note 23 (explaining that CEDAW does not mention the rights of women during an armed conflict or the rights of women against sexual violence).

184. See Nichols *supra* note 3 (detailing assaults by the military); see also Kassa & Pujol-Mazzani, *supra* note 4 (providing further details of assaults by the military).

Ethiopia violated Articles 11 and 25 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa by not only failing to protect women and girls from rape and gender-based violence during an armed conflict, but by also perpetuating sexual violence and failing to provide adequate remedies for the atrocities.<sup>185</sup> Ethiopia should comply with the Maputo Protocol by taking action to protect women and girls from sexual violence and provide remedies to survivors who have already faced sexual assault.

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185. See Mersie *supra* note 139 (stating that only four soldiers have been convicted of rape since the conflict began, with no mention of monetary remedies for victims).